ESMAIL SAHIB v. NOORDIN.

[Orig. Civ. Juris. (Spenser-Wilkinson, J.) May 7, 1951]

[Singapore — Suit No. 18 of 1951]

Moneylenders Ordinance — Presumption under s. 3 — Definition of Moneylender.

In this case the plaintiff claimed repayment of money lent by him to the defendant and interest thereon. The defence alleged non-compliance with section 4 of the Moneylenders Ordinance. The only issue before the Court was whether the plaintiff was a moneylender within the meaning of the Ordinance.

Held, (1) that Section 3 of the Moneylenders Ordinance put the burden on the plaintiff to show that he was not a moneylender and (2) that it is not sufficient to prove that the lender has occasionally lent money at a remunerative rate of interest; some degree of system and continuity in moneylending transaction must be proved.

Newton v. Pyke[3] followed:

Cases referred to:—

(1) *Edgelow v. MacElwee* (1918) 1 K.B. 205.

(2) *Litchfield v. Drayfus* (1906) 1 K.B. 584.

(3) *Newton v. Pyke* 25 T.L.R. 127.

CIVIL SUIT.

Eric Choa for the plaintiff.

N. A. Christopher for the defendant.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Spenser-Wilkinson, J.: — The plaintiff's claim was in respect of two items of money lent to the defendant — $5,000 on the 15th of September 1948 and $900 on the 30th October 1949 with interest thereon. The loans were not disputed and it was common ground that the only point which called for decision was whether or not plaintiff was a "moneylender" within the meaning of the definition contained in section 2 of the Moneylenders Ordinance.

The definition of a "moneylender" contained in our Ordinance is the same as that contained in the English Act of 1900 and it has been held in the courts in England that under this definition it is a question of fact in each case whether or not the transactions carried out by the lender are such as to bring him within the meaning of the words "carrying on the business of moneylending". It is not sufficient to prove that the lender has occasionally lent money at a remunerative rate of interest; some degree of system and continuity in moneylending transactions must be proved (*Edgelow v. MacElwee*[1], *Litchfield v. Dreyfus*[2], *Newton v. Pyke*[3]).

There is however one important difference between the English law on this subject and the local law. Section 3 of the Moneylenders Ordinance reads as follows:—

"3. Save as excepted in paragraphs (a), (b), (c), (d) and (f) of the definition of "Moneylender" in section 2, any person who lends money at interest or who lends a sum of money in consideration of a larger sum being repaid shall be presumed, until the contrary be proved, to be a moneylender."

Counsel were unable to cite any local authority which could assist me in determining the effect of this section and I have been in some doubt as to the extent of the burden of proof cast by this section upon a plaintiff who has in fact lent money at interest. It is difficult to see how else a plaintiff can discharge this burden except by himself giving evidence to the effect that he is not a moneylender and by submitting to cross-examination on the point.

In this case, as the claim is based upon two loans made by the plaintiff to the defendant at fairly high rates of interest, it is clear that in the absence of some evidence to the contrary I should be bound to presume that the plaintiff was a moneylender and his claim would therefore fail. The plaintiff however gave evidence which, in so far as it is material to the dispute, was uncontradicted. Although his evidence was not altogether satisfactory in certain respects, particularly in regard to his own position *vis-a-vis* the General Lighterage Company, of which he alleged that he was the manager, yet on the material parts of his evidence regarding the number and nature of the loan transactions which he has carried on since 1945 I saw no reason to disbelieve him. He admitted to having made the following loans:—

In 1945 he lent a sum of $2,500 to one Kanu without interest; between then and 1948 he lent $5,000 to one Abdul Gany to assist him in increasing his capital; $1,500 to one Pakir Mohamed who agreed to pay interest; and $3,000 to one Kamal.

I am satisfied that Kanu and Pakir Mohamed were both friends of the plaintiff; and Abdul Gany was a very close friend. Kamal was also a friend of the plaintiff but the loan to him appears to me to be within exception (d) to the definition of "Moneylender" in the Ordinance. The money was lent to this man on the understanding that he would allow the plaintiff to rent space at 34 Raffles Quay for the purpose of his (the plaintiff's) business. It was thus a loan made by the plaintiff in the course of and for the purposes of his business of lighterage.

I find as a fact, therefore, that, apart from the loan to Kamal, the plaintiff has in a addition to the loans in question in this suit lent money to three persons in the course of about three years. On the whole it

appears to me that the number and nature of the loans made by the plaintiff show no greater system or continuity than in the case of *Newton v. Pyke* where it was held that the plaintiff was not a moneylender within the meaning of the Act. This decision was not cited at the hearing but seems to me to be more in point than the other decisions mentioned above. Following the decision in that case I hold that, although *prima facie* on the pleadings the plaintiff is a moneylender, yet he has proved the contrary to my satisfaction and is not a moneylender.

This being so, the plaintiff is entitled to recover the amount of the loans; but as the interest on the loan of $5,000 slightly exceeds the rate of 20 per cent per annum which is the maximum permitted by section 10(4) of the Ordinance, his claim must be reduced to this extent.

Subject to this reduction there will be judgment for the plaintiff with costs.

Order accordingly.

WILKINS AND OTHERS
v.
KANNAMMAL (f) AND ANOR.

[Court of Appeal (Foster Sutton, C.J., Taylor and Wilson, JJ.) May 5, 1951]

[K. L. — Civil Appeal No. 9 of 1951]

The Torrens law is a system of Conveyancing; it does not abrogate the principles of equity; it alters the application of particular rules of equity but only so far as necessary to achieve its own special objects.

COURT OF APPEAL.

S. M. Sharma for the appellants.

S. N. Veerasamy and *M. S. Mahendran* for the respondents.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Taylor, J. : — These appeals were decided orally, and unanimously, the Chief Justice adding that the grounds of judgment would be given later in writing.

This litigation arises out of the affairs of one Charles Wilkins who died in India in 1945. Some time before the war it was arranged that he should take up land at the Cameron Highlands and develop it as a family estate. His two sons, who were abroad, were to contribute money as and when they could, to assist in the development and his wife was to have a share. This plan was carried out and a tea-garden called Forest Flower Estate gradually came into existence. The titles to the land were registered in the name of Charles Wilkins. The household included an orphan named Kannammal who had been brought up as a member of the family, though not legally adopted, and was on affectionate terms with Mrs. Wilkins. In April 1941 Wilkins transferred the titles into the name of Kannammal as trustee. At this time Mrs. Wilkins was living permanently in India and the two sons were in different places in Africa. About the middle of 1942 Wilkins was interned by the Japanese. He informed his brother, John Wilkins, of the transfer and stated that he had given to Kannammal a letter explaining the trust. His health deteriorated and shortly after the Liberation he died. In 1946 John Wilkins went to the estate and after some time Kannammal produced a document bearing Charles Wilkins' signature which she said was the trust letter. The effect of this document was to make the transfer to Kannammal a transfer of the beneficial interest in the whole of the estate which was unencumbered. She explained that the words "as trustee" had been inserted merely for her protection and not with the intention of making her a trustee. This document was expressed in language completely inconsistent with the view that it could have been composed by the deceased, of whose writings ample specimens were available. The signature was written at a curious angle and there was evidence that the deceased had a habit of signing blank papers in idle moments. The widow and sons sued Kannammal as the registered proprietress for a declaration that she was a trustee for them and the legal personal representative of the deceased in equal shares.

The trial Judge held that the letter mentioned was in fact a forgery and in the opinion of this Court the evidence amply justifies that finding. He also said : — "the immediate cause of the transfer was, no doubt, the fear of the deceased that the property would be confiscated by the Japanese" (on the view that they were more likely to confiscate the property if it were in his name than if it were in Kannammal's). Later in his judgment, however, he expressed the view that Wilkins wished to make some provision for Kannammal but not to the exclusion of his wife and sons and he ended by making a declaration that she held the whole estate in trust for herself and the three plaintiffs in equal shares. The plaintiffs appealed. Kannammal cross appealed on the grounds that there was no enforceable trust in favour of the wife and sons, that the letter was genuine and that the whole of the estate belonged to her.